

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #8	CCRB Case #: 201804879	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 06/10/2018 3:45 PM	Location of Incident: In front of 568 46th Street	Precinct: 72	18 Mo. SOL 12/10/2019	EO SOL 12/10/2019	
Date/Time CV Reported Sun, 06/10/2018 7:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/19/2018 11:06 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Ericka Best	05534	948665	071 PCT
2. POM Roger Delfosse	14900	955863	071 PCT
3. POM Luis Lopez	27415	930590	071 PCT
4. SGT Gesner Charles	03036	925061	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Ericka Best	Force: Police Officer Ericka Best used physical force against § 87(2)(b)	
B.POF Ericka Best	Force: Police Officer Ericka Best used physical force against § 87(2)(b)	
C.POM Luis Lopez	Force: Police Officer Luis Lopez used physical force against § 87(2)(b)	
D.SGT Gesner Charles	Force: Sergeant Gesner Charles used physical force against § 87(2)(b)	
E.POM Luis Lopez	Force: Police Officer Luis Lopez used physical force against § 87(2)(b)	
	§ 87(2)(g), § 87(4-b)	

### Case Summary

On June 10, 2018, Sgt. Gesner Charles of the 71<sup>st</sup> Precinct filed this complaint on behalf of § 87(2)(b) via the telephone with IAB, generating log #18-22634. During his in-person interview, § 87(2)(b) also made an allegation on behalf of an individual known to him as “Frank”, who was identified by the investigation as § 87(2)(b).

On June 10, 2018, at approximately 3:45 p.m., in front of 568 46<sup>th</sup> Street, PO Ericka Best of the 71<sup>st</sup> Precinct allegedly pushed § 87(2)(b) against a car (**Allegation A: Force**, § 87(2)(g)). Then, PO Best with the assistance of Sgt. Charles and PO Luis Lopez of the same command took § 87(2)(b) to the ground (**Allegations B, C, and D: Force**, § 87(2)(g)). § 87(2)(b) alleged that he sustained a fractured nose as a result of the take down. In addition, PO Lopez punched § 87(2)(b) once on his shoulder (**Allegation E: Force**, § 87(2)(g)).

§ 87(2)(b) was arrested during the incident and charged with unlawful possession of marijuana and disorderly conduct. § 87(2)(b) was also arrested and charged with disorderly conduct.

Video recorded by PO Best’s and PO Lopez’s body-worn cameras (BWC) was obtained by the investigation [BR 07, 08, *Originals*]. § 87(4-b), § 87(2)(g)

After multiple reminders, § 87(2)(b) failed to provide his identification to the investigation. However, based on the BWC and NYPD documents the investigation verified his the victim the case.

### Findings and Recommendations

**Allegation (A) Force: Police Officer Ericka Best used physical force against** § 87(2)(b)

**Allegation (B) Force: Police Officer Ericka Best used physical force against** § 87(2)(b)

**Allegation (C) Force: Sergeant Gesner Charles used physical force against** § 87(2)(b)

**Allegation (D) Force: Police Officer Luis Lopez used physical force against** § 87(2)(b)

It is undisputed that on June 10, 2018, at approximately 3:45 p.m., in the vicinity of 571 46<sup>th</sup> Street in Brooklyn, § 87(2)(b) was involved in an altercation with § 87(2)(b) an unidentified male known to § 87(2)(b) as § 87(2)(b) and § 87(2)(b)’s cousin § 87(2)(b). At that time, PO Best and PO Lopez were stationed at the corner of 46<sup>th</sup> Street and 6<sup>th</sup> Avenue for a Puerto Rican Day Parade, and Sgt. Charles accompanied by PO Delfosse arrived at the location to check their memo books. The officers observed the altercation and separated the civilians involved. § 87(2)(b)

§ 87(2)(b) As a result of the incident, § 87(2)(b) sustained a fractured nose. The rest is in question.

In his verified statement to the CCRB, § 87(2)(b) stated he was involved in a loud verbal dispute with Franciso and § 87(2)(b) when he and § 87(2)(b) approached each other closely to fight [BR 10]. The officers stationed at the corner briefly activated their siren. Shortly thereafter, both § 87(2)(b) and § 87(2)(b) swung at each other but neither made physical contact. PO Best, PO Lopez, and an officer described as a black male, 6' tall, well-built, bald, in his 30s, in uniform approached them and instructed them to walk away. All the males separated and started walking away in different directions, when § 87(2)(b) ran to the street from his house located at 557 46<sup>th</sup> Street and hit § 87(2)(b). Both engaged in a fight and § 87(2)(b) ran towards them to tell them to stop. When § 87(2)(b) was within two feet of parked cars near 568 46<sup>th</sup> Street, PO Best reached him and pushed him against the car with her shoulder without issuing him any commands. PO Lopez and the third officer joined PO Best and they grabbed § 87(2)(b)'s upper body and pushed him down to the ground. § 87(2)(b)'s face made contact with the ground since he could not brace himself. § 87(2)(b) immediately felt dizzy and observed blood coming from his nose. The third officer then picked him up and placed him in handcuffs. § 87(2)(b) noted that during the incident, one of the officers dropped his BWC to the ground. § 87(2)(b) was first transported to the stationhouse and then taken to § 87(2)(b), where he was diagnosed with a fractured nose. He also complained of back pain and was administered pain medication. § 87(2)(b) was consistent on his preceding statement to the CCRB [BR 09].

§ 87(2)(b)'s pre-hospital care report prepared by FDNY EMTs notes that he alleged he was "body slammed" to the ground during his arrest and wanted his nose checked [PD 02]. § 87(2)(b)'s medical records from § 87(2)(b) from the incident date confirm that he was diagnosed with a closed fracture of nasal bone [PD 03]. On June 12, 2019, § 87(2)(b) visited the hospital again and complained of dizziness, headache and pain to his lower back. He was diagnosed with a concussion and pain after a recent trauma.

§ 87(2)(b) was unavailable for the investigation (See IA248 for contact attempts).

During his unverified phone statement, § 87(2)(b) acknowledged running to the street after observing § 87(2)(b) arguing and swinging at § 87(2)(b) and an unknown individual [BR 12]. § 87(2)(b) acknowledged hitting an unknown individual. He indicated he did not observe how § 87(2)(b) was taken to the ground but saw that after the apprehension, § 87(2)(b) had a bloody nose.

In her unverified phone statement, § 87(2)(b)'s mother § 87(2)(b) stated she only observed the aftermath of the incident and noted she saw a female officer punch § 87(2)(b) in the stomach [BR 14].

During his unverified phone statement, § 87(2)(b)'s step-father stated that unidentified officers beat § 87(2)(b) up and threw him to the ground [BR 15]. A female officer also punched § 87(2)(b) in his stomach twice.

When interviewed at the CCRB, PO Best provided a consistent account of the circumstances that preceded her interaction with § 87(2)(b) and § 87(2)(b) with that of § 87(2)(b) [BR 17]. She confirmed the officers first activated the siren in an attempt to prevent the fight but then approached the males since it looked like the situation was going to escalate and they did not disperse. However, none of the males were involved in a fight yet. There was a parade at the time and the officers did not want any altercations in a crowded area. PO Best approached § 87(2)(b) without issuing him any commands, grabbed him by his arms and placed him against a car that was parked within a foot of him. PO Best denied using any force when placing § 87(2)(b) against a car and stated that § 87(2)(b) was

moving towards the car with her. PO Best explained she did so to separate § 87(2)(b) from the rest of the group to prevent the altercation. PO Best and PO Lopez instructed the males to disperse and during their conversation, § 87(2)(b) approached Franciso and punched him in the face in front of PO Best. PO Best immediately grabbed § 87(2)(b)'s arm and observed that Franciso was now being assaulted by § 87(2)(b) and § 87(2)(b). PO Lopez and Sgt. Charles were handling that fight, while PO Delfosse assisted PO Best in holding § 87(2)(b). After she turned, she observed § 87(2)(b) and PO Lopez on the ground and Sgt. Charles somewhere in their vicinity. PO Best did not observe how they got to the ground and denied taking § 87(2)(b) down. By the time PO Best was finished with handcuffing § 87(2)(b) and § 87(2)(b) were in handcuffs and § 87(2)(b) ran away. Then, numerous back-up officers from various commands responded. Later, during the arrest processing, PO Best learned from PO Lopez that § 87(2)(b) alleged that his nose was broken. PO Best did not prepare any TRI reports for § 87(2)(b).

PO Lopez's account of the circumstances preceding his interaction with § 87(2)(b) and rest of the group were consistent with those of § 87(2)(b) and PO Best [BR 18]. He confirmed that the officers approached the group to disperse them. Upon approach, PO Lopez heard § 87(2)(b) tell someone on the phone that there was going to be a fight. PO Lopez confirmed that upon approach, he and PO Best engaged in a conversation with the males and instructed them to disperse. While PO Lopez was talking to § 87(2)(b) ran towards § 87(2)(b) and punched him. When PO Best grabbed § 87(2)(b) PO Lopez observed § 87(2)(b) and § 87(2)(b) punching each other. PO Lopez approached them and inserted himself between them in an attempt to separate them. § 87(2)(b) ran towards them and punched § 87(2)(b) across PO Lopez's body. § 87(2)(b)'s weight carried all of them to the ground. PO Lopez landed on his back while § 87(2)(b) fell on his left side on top of PO Lopez. § 87(2)(b) also fell to the ground to the left of PO Lopez while § 87(2)(b) remained standing. All three civilians continued punching one another while remaining in those positions. At some point, when the back-up officers arrived, one of them pulled § 87(2)(b) off PO Lopez and § 87(2)(b) ran away. When PO Lopez stood up, he observed that PO Lopez was holding § 87(2)(b) and Sgt. Charles and PO Delfosse were standing next to § 87(2)(b) who was in handcuffs. When § 87(2)(b) was taken to the 72<sup>nd</sup> Precinct stationhouse for arrest processing, he first accused PO Lopez of hitting him, then stated someone else hit him and finally said he did not know who hit him. PO Lopez did not observe § 87(2)(b) bleed from his nose prior to the fall and believed that § 87(2)(b) sustained it when they were on the ground, possibly from being punched by the other party involved in a fight.

Sgt. Charles' account of the beginning of the incident was similar to the ones provided by the parties involved noted above apart for the fact that he noted that § 87(2)(b) and § 87(2)(b) were already involved in a physical fight when the officers first observed them [BR 16]. When the officers approached them and instructed them to disperse, they complied. However, shortly thereafter, § 87(2)(b) and § 87(2)(b) started fighting again, punching and kicking each other. They were then joined by § 87(2)(b) and § 87(2)(b). Sgt. Charles called for assistance and when the officers approached them again, § 87(2)(b) ran away. At that time, the males were on the ground "on top of each other." Sgt. Charles did not see how they got to the ground but assumed they fell during the fight. Sgt. Charles also observed that § 87(2)(b) was bleeding from his nose and assumed he might have sustained it from the fight. Sgt. Charles initially stated he pulled one of the civilians away and then said he did not have physical contact with any of them. He denied pushing § 87(2)(b) to the ground.

PO Delfosse's statement to the CCRB was consistent with that of PO Best and PO Lopez apart from the following details [BR 19]. He stated that PO Best and PO Lopez went in between § 87(2)(b) and § 87(2)(b) in an attempt to break the potential fight but did not see how they were doing that. An angry crowd started gathering around and PO Delfosse heard the officers shout, "Stop the fight. Break it up." When § 87(2)(b) came out and punched § 87(2)(b) PO Best asked PO Delfosse to hold § 87(2)(b) which he did. While PO Delfosse was holding § 87(2)(b) ran away. PO Delfosse did not see what the rest of the officers were doing and noted that after three to five minutes, PO Best came back and handcuffed § 87(2)(b). After that, Sgt. Charles asked PO Delfosse to hold § 87(2)(b) who was sitting upright on the curb. PO Delfosse did not recall whether § 87(2)(b) was handcuffed at that point and was not aware how § 87(2)(b) got to the ground. PO Delfosse denied taking § 87(2)(b) to the ground or using any force towards him. § 87(2)(b) told PO Delfosse that someone broke his nose and PO Delfosse informed him they would get him medical attention. PO Delfosse's CCRB testimony was consistent with his memo book entry in that he initially held a male without a shirt, identified by the investigation as § 87(2)(b) and then held a male wearing a red shirt, identified by the investigation as § 87(2)(b) [NYPD 22].

Video recorded by PO Best begins with an officer holding § 87(2)(b) against a hood of a car [BR 07]. At the same time, an unidentified white male officer in uniform is seen sitting on top of § 87(2)(b)'s legs. At 0:13, PO Lopez runs towards them. At the same time, § 87(2)(b) briefly appears in the camera sitting on the ground and pointing towards § 87(2)(b). The events depicted take place after § 87(2)(b) was allegedly apprehended and taken down. During her interview, PO Best explained that everything happened very fast and she activated her BWC as soon as she could [BR 17]. At 0:16, an officer is seen placing his arm under § 87(2)(b)'s elbow. Upon reviewing the video footage, Sgt. Charles acknowledged that he was holding § 87(2)(b) at that point [BR 16]. Sgt. Charles did not want to change his previous testimony and denied taking § 87(2)(b) to the ground prior to that. At 1:08, § 87(2)(b) is seen standing by a car and being held by another officer, a black male in uniform. At 1:40, PO Lopez tells other officers, "We had to wrestle these guys to the floor." During her interview, she explained he was referring to what happened to PO Lopez and other individuals fighting [BR 17].

Video recorded by PO Lopez's BWC begins at the stationhouse when § 87(2)(b) is being led inside [BR 08]. PO Lopez explained he was unable to record the incident on the scene since his camera fell off [BR 18].

§ 87(2)(b)'s arrest report § 87(2)(b) notes that he was taken to the ground by PO Lopez to overcome resistance and aggression [NYPD 23].

Digital TRI report § 87(2)(b) prepared on behalf of PO Lopez for § 87(2)(b) by Sgt. Charles notes that § 87(2)(b) was pushing/shoving and fighting with the officers [NYPD 03]. § 87(2)(b) was forcibly taken to the ground and restrained by PO Lopez in self-defense and to defend other officers. § 87(2)(b)'s injury is documented and is noted as caused by an intentional action of an officer. The handwritten copy of the TRI notes that § 87(2)(b)'s injury was sustained as a result of fight with another individual [NYPD 12]. When presented with a copy of the TRI during his interview, PO Lopez stated he had not seen it before but spoke to Sgt. Charles regarding the incident [BR 18]. PO Lopez stated he did not observe § 87(2)(b) push and fight the officers and reiterated he did not take § 87(2)(b) to the ground. PO Lopez believed that he prepared a scratch copy of the TRI at the 72<sup>nd</sup> Precinct stationhouse but believed that something happened to it and officers could not find

that report. Therefore, Sgt. Charles had to re-do the TRI report himself a week later. When the TRI was presented to Sgt. Charles during his interview, he stated he might have prepared one. Sgt. Charles did not recall observing § 87(2)(b) pushing and fighting with the officers and explained that he prepared the TRI based on his conversation with PO Lopez. Sgt. Charles did not know why it was marked that § 87(2)(b) was taken to the ground but stated he could have been. Sgt. Charles was unaware why it was marked that § 87(2)(b)'s injury was caused by an intentional action of MOS.

The corresponding Investigating Supervisor's Assessment Report prepared by Sgt. Yuriy Chuyko of IAB notes that § 87(2)(b) and known witnesses were interviewed and the results of the investigation were uploaded into the NYPD database under IAB log #2018-22634. The narrative of the corresponding IAB log notes that § 87(2)(b) alleged that an officer took him to the ground and broke his nose [NYPD 01]. No other details are listed.

Although PO Delfosse, who is a black male, 5'10" tall, 198 pounds, partially bald, and was 38 years old at the time of the incident, fits the description of the subject officer who allegedly took § 87(2)(b) to the ground together with PO Best and PO Lopez, the investigation determined Sgt. Charles, who is a black male, 5'9" tall, 200 pounds, with short black hair, and was 46 years old at the time of the incident, to be the subject of the forcible takedown together with PO Best and PO Lopez. Despite the fact that Sgt. Charles initially denied having any contact with § 87(2)(b) and taking him down, he later acknowledged that he was holding § 87(2)(b) at 0:16 in the video footage. Based on PO Lopez's and PO Delfosse's testimonies and PO Delfosse's memo book entry, it was determined that the officer who was holding § 87(2)(b) at the same time was PO Delfosse.

§ 87(2)(g)

#### **Allegation (E) Force: Police Officer Luis Lopez used physical force against § 87(2)(b)**

During his CCRB interview, § 87(2)(b) alleged that after he was lifted off the ground, he observed § 87(2)(b) lying on the ground face-down with four officers next to him [BR 09]. An officer only described as a black male in uniform was punching § 87(2)(b) on his ribs and arms. Although § 87(2)(b) could not see much of § 87(2)(b)'s actions at the time, he stated that § 87(2)(b) was not resisting. § 87(2)(b) did not make this allegation in his preceding statements either to IAB or the CCRB [NYPD 01, BR 09].

None of the civilians from whom phone statements were obtained indicated they observed the alleged misconduct [BR 12, 13, 14, 15].

PO Lopez testified that after he stood up, he observed § 87(2)(b) being held on the ground face-down by an unidentified officer from the 72<sup>nd</sup> Precinct [BR 18]. § 87(2)(b) was not yet handcuffed and was resisting by moving his hands with one hand being behind his back. § 87(2)(b) was refusing to give the other hand to the officer. It took PO Lopez approximately five seconds to reach § 87(2)(b) during which time he continued resisting arrest. PO Lopez punched § 87(2)(b) on his right shoulder once to prevent him from getting back up and to prevent him from moving. § 87(2)(b) stopped moving and the other officer placed him in handcuffs. PO Lopez did not observe that officer punch § 87(2)(b). PO Lopez believed that he prepared a TRI report for § 87(2)(b) but could not recall for certain.

The rest of the officers interviewed denied punching § 87(2)(b) or observing any officers do so [BR 16, 17, 19]. Sgt. Charles added that there were no issues in apprehending any of the civilians.

Video recorded by PO Best depicts PO Lopez running towards § 87(2)(b) and unidentified white male officer in uniform at 0:13 [BR 07]. § 87(2)(b) is lying on the ground face-down and the unidentified officer is on top of his legs. At 0:30, PO Lopez and the officer are seen holding § 87(2)(b) while he is still on the ground. At 0:49, PO Lopez and the officer walk § 87(2)(b) who is already in handcuffs. The video does not depict any force used against § 87(2)(b) by either officer.

Although § 87(2)(b) made this allegation against an unidentified black officer in uniform, based on PO Lopez's testimony and video evidence, the investigation determined PO Lopez to be the subject officer.

No TRI reports prepared for § 87(2)(b) were provided by IAB. § 87(2)(b)'s arrest report § 87(2)(b) does not note any force used against him [NYPD 23].

§ 87(2)(g)

#### **Allegation**

**(F)**

§ 87(2)(b)

§ 87(4-b)



### Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]
- This is a first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party [BR 20].
- PO Best has been a member of service for eight years and has been a subject in 10 other CCRB complaints and 21 allegations, none of which were substantiated.
  - 201202296 and 201606455 involved physical force allegations against PO Best that were closed as complainant uncooperative and exonerated, respectively.
  - § 87(2)(g) [REDACTED]  
[REDACTED].
- PO Lopez has been a member of service for 16 years and has been a subject in five other CCRB complaints and 11 allegations, of which two were substantiated:
  - 201605988 involved a substantiated allegation of premises entered and/or searched against PO Lopez. The Board recommended Command Level Instructions and the NYPD imposed Formalized Training.
  - 201800674 involved a substantiated allegation of refusal to obtain medical treatment against PO Lopez. The Board recommended Formalized Training and the NYPD has not yet imposed discipline.
  - 201307288, 201400404, 201605988, 201801222 involved physical force allegations against PO Lopez that were closed as alleged victim uncooperative, administratively closed, unfounded, and exonerated, respectively.
  - § 87(2)(g) [REDACTED]  
[REDACTED]
- Sgt. Charles has been a member of service for 19 years and has been a subject in five other CCRB complaints and nine allegations, of which four were substantiated:
  - 201211897 involved a substantiated allegation of a vehicle search against Sgt. Charles. The Board recommended Command Discipline and the NYPD imposed no penalty.
  - 201802489 involved substantiated allegations of discourtesy - word, sexual harassment and romantic proposition against Sgt. Charles. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.
  - 201800905 involved a physical force allegation against Sgt. Charles that was exonerated.
  - § 87(2)(g) [REDACTED]  
[REDACTED]
- PO Delfosse has been a member of service for five years and has been a subject in two other CCRB complaints and two allegations, none of which were substantiated. § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]



### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- On March 1, 2019, a request to determine if a Notice of Claim was filed was submitted; confirmation from the New York City Office of the Comptroller will be forwarded upon receipt [BR 21].

to con



Squad No.: 8

Investigator: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Squad Leader: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_